

Introduction to Sunset Review

Joint Sunset Review Committee

Asm. Alyson Huber, Chair

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By Sarah Weaver

Sunset Review Defined

A "sunset review" is an assessment of whether a state agency¹ is necessary, effective, and efficient. Sunset review is conducted pursuant to a "sunset date" – an expiration date for the agency. The review focuses on the overall necessity of the agency, its cost-effectiveness, and measures its successes and failures. At the conclusion of a sunset review, the reviewing body may:

- Let the agency expire at the sunset date, or;
- Continue the agency; and may
- Make recommendations for improving operations, and/or
- Suggest legislation to aid the agency's mandate.

Oversight

Although the current Joint Sunset Committee was created in 2011, California has been doing sunset reviews in various forms since 1993.

The Senate Business and Professions Committee and the Assembly Consumer Protection Committee began reviewing the 32 regulatory boards under the Department of Consumer Affairs (DCA) in 1993.²

As a result of these hearings, the Joint Legislative Sunset Review Committee (JLSRC) was established in 1994.³ JLSRC was required to review the 32 DCA licensing boards and bureaus

¹ "Agency" is used in this instance to mean any governmental entity subject to California Sunset Review. California Government Code 9147.7(a) defines an "eligible agency" for Sunset Review to mean any agency, authority, board, bureau, commission, conservancy, council, department, division, or office of state government, however denominated, excluding an agency that is constitutionally created or an agency related to postsecondary education, for which a date for repeal has been established by statute on or after January 1, 2011.

² Senate Committee on Business, Professions, and Economic Development policy analysis for AB 1659 (Huber), 2010. June 21, 2010.

³ SB 2036 (McCorquodale) Chapter 908, Statutes of 1994. A policy committee analysis for SB 2036 noted that, besides promoting government transparency and efficacy, the motivation for the bill was term limits: "The author adds that term limits and the effects of Proposition 140 will continue to reduce the number of legislators and staff with long-term institutional knowledge and expertise on the workings of the numerous consumer boards. By

approximately every four years.⁴ Merely the threat of extinction jolted many boards from complacency, but the committee also exacted reform. From its unique vantage, JLSRC identified crosscutting issues that unified DCA's management of professional regulatory concerns, including standardizing consumer complaint processes, licensing exams, enforcement, and board constitution.⁵

In 2003, the committee's jurisdiction was expanded to include all administrative or regulatory boards, commissions, committees, councils, associations, and other authorities with appointed membership.⁶ (Agencies and departments were not included.) The enabling legislation tasked it with bringing clarity to the "more than 400 categories of administrative or regulatory boards, commissions, committees, councils, associations, and authorities....established without any method of periodically reviewing their necessity, effectiveness, or utility."⁷ The committee's name was later amended to the "Joint Committee on Boards, Commissions & Consumer Protection (JCBCCP)."⁸ The committee never completed any reviews under its expanded authority.

California Performance Review

In February 2004, Governor Schwarzenegger embarked on an ambitious plan to "blow up the boxes" of California's government (a reference to the organizational chart boxes representing California's government). Going far beyond JCBCCP's expanded authority, the Governor directed an entire audit of state operations, called the "California Performance Review" (CPR). CPR enlisted JCBCCP staff to formulate recommendations in their areas of expertise, and requested that the committee delay exercising its expanded authority in light of the review.⁹

On August 3, 2004, CPR issued 4-volume report which proposed dramatic government reorganization. Of the JCBCCP universe, 339 boards and commissions were reviewed and 118 were proposed for elimination.¹⁰ Although there was little question of some bureaucratic redundancies, the report's dramatic conclusions were surprising -- even to many of those involved.¹¹ The nonpartisan Legislative Analysts Office (LAO) was also skeptical, stating that many of the reorganization plan's elements "lacked strong rationale."¹²

instituting an ongoing review process, this bill insures that boards will not go unobserved as new members and staffs enter the Legislature."

⁴ The committee appears to have reviewed each entity at least once during this period, and several multiple times.

⁵ See "Crosscutting Issues for All Boards," recommendations from 2000-2002, 2003, and 2005. Available at <http://www.sen.ca.gov/JLSRC/pubs.htm>.

⁶ SB 364 (Figueroa) Chapter 789, Statutes of 2003.

⁷ CA Government Code Section 9148.5.

⁸ AB 1467 (Negrete McLeod) Chapter 33, Statutes of 2004.

⁹ Senate Committee on Business, Professions, and Economic Development policy analysis for AB 2130 (Huber), 2010. June 28, 2010.

¹⁰ CPR, "Evaluating California's Boards and Commissions," available at http://cpr.ca.gov/CPR_Report/Form_Follows_Function/Evaluating_Boards_and_Commissions.html.

¹¹ The extent to which long-time capitol staff recommendations were taken in the final report are of some debate. The group's working papers are presently unavailable to the public. Various conversations with the author, March 2011.

¹² August 27, 2001, LAO "An Initial Assessment of the California Performance Review," available at http://www.lao.ca.gov/2004/cpr/082704_cpr_review_ov.htm.

The release of the CPR report and subsequent restructuring attempts by the administration¹³ eroded the relationship between the Legislature and the Administration regarding sunset review. JCBCCP's DCA reviews continued through 2005, but no members were appointed to the committee after 2006.¹⁴

Current Oversight Structure

Although CRP's report was not immediately and wholly adopted, it was a starting point for discussions with the Legislature, and some changes have been made.

The spotlight on government served as a reminder to the Legislature of its oversight responsibilities. In short order, the Legislature directed its policy committees to begin oversight hearings¹⁵ and created four legislative bodies to complement the existing oversight entities.

Existing oversight bodies:

- Legislative Analyst's Office (LAO): The Legislature established the LAO in 1941 as a nonpartisan fiscal and policy advisor to the California Legislature. It is overseen by the Joint Legislative Budget Committee (JLBC), a 16-member bipartisan committee. The office currently has a staff of 43 analysts and approximately 13 support staff.¹⁶
- California State Auditor (CSA), Bureau of State Audits: CSA was originally created in 1993 to develop a single audit of the executive branch.¹⁷ Subsequently granted broader authority, it now provides independent and nonpartisan assessments of California government's financial and operational activities in compliance with generally accepted government auditing standards. CSA reports its findings to the Legislature and recommends actions to improve government operations. Any member of the Legislature can request an audit either through the Joint Legislative Audit Committee or via legislation.¹⁸
- Little Hoover Commission (Commission): Created in 1962,¹⁹ the Commission is an independent state oversight agency created to investigate state government operations and promote efficiency, economy, and improved service. The Commission is a balanced bipartisan board composed of five citizen members appointed by the Governor, four

¹³ See 2005 reorganization plans submitted to the Little Hoover Commission, available at <http://www.lhc.ca.gov/reorg/Previous%20Reorg%20Plans%20Updated%2011-8-10.pdf>.

¹⁴ Senate Committee on Business, Professions, and Economic Development policy analysis for AB 2130 (Huber) Chapter 670, Statutes of 2010. June 28, 2010. This committee continued DCA board/bureau sunset reviews to this day.

¹⁵ In late 2009 and 2010, Assembly and Senate leadership encourage policy committees to hold oversight hearings. The Senate issued a policy paper to encourage oversight in Feb. 2010, "That Government... For the People... Shall Not Perish. Oversight by California's State Senate." The Assembly issued a similar memorandum in January 2011.

¹⁶ Legislative Analyst's Office web site, "About Us," available at http://www.lao.ca.gov/laoapp/laomenu/lao_menu_aboutlao.aspx.

¹⁷ SB 93 (Maddy) Chapter 12, Statutes of 1993.

¹⁸ California State Auditor's web site, "Frequently Asked Questions," available at <http://www.bsa.ca.gov/aboutus/faqs>.

¹⁹ CA Government Code Section 8501 et seq.

citizen members appointed by the Legislature, two Senators and two Assemblymembers. The full Commission selects study topics that come to its attention from citizens, legislators and other sources. In addition, it has a statutory obligation to review and make recommendations on proposed government reorganization plans.²⁰

- The Office of State Audits and Evaluations (OSAE): The Department of Finance (DOF), through OSAE, is required to do certain financial, performance, information technology, and compliance audits, quality assurance reviews, and budgetary reviews. OSAE also performs special program reviews as requested by the Governor's Office, the Director of Finance, or other state entities.²¹
- State Controller's Office: The Controller's office accounts for and controls the disbursement of all state funds. Thus, this office is well-positioned to audit various state and local government programs and inform the public of the State's, cities', counties' and districts' financial conditions. Several bills this session seek to expand the Controller's audit and oversight functions.²²

New oversight bodies:

- The Senate Office of Oversight and Outcomes (Office): Created by Senate President pro Tem Darrell Steinberg in 2008, the Office is described as a "strike team."²³ The Office is comprised of three veteran journalists and an attorney who bring investigative reporting skills to scrutinize state government. The Office has an undefined jurisdiction, and is not authorized to hold hearings or analyze bills. It does, however, generate reports that may be used as background briefings for other committees, and presents findings that may be translated to legislation.
- The Assembly Committee on Accountability and Administrative Review (ACAA): ACAA is the Assembly's counterpart to the Office. ACAA is a standing committee charged with investigating California state government programs and agencies to help improve program performance, find efficiencies and save taxpayers' money.²⁴ ACAA does have hearing authority and will begin hearing oversight bills in 2011.
- Assembly Budget Subcommittee No. 6: Budget Process, Oversight and Program Evaluation: This new subcommittee was created in 2011 to undertake oversight from a budget perspective.

²⁰ Little Hoover Commission web site, "About Us," available at <http://www.lhc.ca.gov/about/about.html>.

²¹ California Department of Finance, OSAE Overview web site, available at <http://www.dof.ca.gov/osae/overview/>.

²² AB 229 (Lara), AB 162 (Smyth), AB 276 (Alejo).

²³ Senate Office of Oversight and Outcomes web site, "About Us," available at <http://www3.senate.ca.gov/portal/site/senoversight/menuitem.56255c49f02a27017e116ef524388a0c/?vgnextoid=4148b34be71f2210VgnVCM1000004283a8c0RCRD&vgnnextfmt=default>.

²⁴ Assembly Committee on Accountability and Administrative Review, "2009-2010, Review of First Year," available at <http://www.asm.ca.gov/acs/newcomframeset.asp?committee=423>.

- Joint Sunset Review Committee (JSRC): JSRC replaced the shell of JCBCCP in 2011.²⁵ The Joint Sunset Review Committee has an expanded jurisdiction that includes “any agency, authority, board, bureau, commission, conservancy, council, department, division, or office of state government.”

Tomorrow.

There is clearly enough government to share. With over 550 entities²⁶ ranging from the California Department of Public Health²⁷ to the Sea Urchin Commission,²⁸ the Legislature needs to ensure that California government is working effectively and efficiently for the people of California. While all of these entities were created with the best of intentions, it is incumbent upon the Legislature to periodically review them to ensure they are fulfilling their intended purpose. Ongoing and systematic oversight must be institutionalized so that successive waves of legislators and staff may continue where the previous class left off.

The Joint Sunset Review Committee is uniquely positioned among all oversight groups to conduct this review. The committee's expanded jurisdiction allows it to analyze issues that cut across multiple departments and has the resources of both houses of the Legislature. The Bureau of State Audits and external organizations, like California Forward, the Pew Center on the States, and UC Hastings College of the Law have also offered their assistance.

The Committee looks forward to coordinating with leadership, policy committees, and other oversight entities to develop review schedules and establish goals and performance measures to ensure the proper checks and balances in state government.

²⁵ AB 2130 (Huber) Chapter 670, Statutes of 2010, repeals JCBCCP, and AB 1659 (Huber) Chapter 666, Statutes of 2010, creates the Joint Sunset Review Committee.

²⁶ See, for example, Governor's appointment list: <http://gov.ca.gov/docs/Statutory-Index-2011.pdf>, state agency directory: <http://www.ca.gov/CaSearch/Agencies.aspx>.

²⁷ California Department of Public Health web site: <http://www.cdph.ca.gov>.

²⁸ California Food and Agriculture Code, Section 79003.